In the Supreme Court of the United States.

OCTOBER TERM, 1899.

EX PARTE: IN THE MATTER OF Thomas Vasquez, petitioner.
EX PARTE: IN THE MATTER OF José Juan Vidal et al., petitioners.
} Original. No. —.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES PROVISIONAL COURT FOR PORTO RICO.

SUGGESTION BY THE UNITED STATES.

Comes now the Solicitor-General on behalf of the United States in the above-entitled causes and files herewith, for the information of the court, a copy of certain correspondence between him and the Secretary of War in relation to the present status of the matters involved therein.

A copy hereof has been furnished to counsel for petitioners.

JOHN K. RICHARDS,
Solicitor-General.

MAY 22, 1900.

23381

DEPARTMENT OF JUSTICE,
Washington, D. C., May 14, 1900.

The SECRETARY OF WAR.

SIR: I have the honor to transmit herewith copies of the brief for the United States in two cases pending upon the docket of the Supreme Court of the United States, entitled Ex Parte: In the matter of Thomas Vasquez, petitioner, and Ex Parte: In the matter of Jose Juan Vidal et al., petitioners. These cases are before the court on petitions for writs of certiorari to review judgments of the United States provisional court for Porto Rico, that in the Vasquez case sentencing the petitioner to pay a fine for influencing one Baez to vote illegally at an election, and the other ousting the petitioners from the municipal offices of Guayama, which they obtained by fraud.

The attention of the Department has been directed to a newspaper publication in which it was stated that General Davis has pardoned Vasquez. If this is so, of course, the court will be unwilling to entertain what is only a moot question. Will you not be good enough to inform me at once whether this report is correct, cabling, if necessary, to Porto Rico for the information?

It is important, also, to know whether any action has been taken by General Davis with regard to the municipal officers concerned in the Vidal case. Please ascertain and advise me whether these persons still hold their offices. Under the order by which the provisional court was instituted ninety

days was given within which application might be made to the Supreme Court for the review of any judgment thereof, so that at the time the petition in this case was presented the petitioners held the offices to oust them from which the judgment of the provisional court was given.

Respectfully,

J. K. RICHARDS,
Solicitor-General.

WAR DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D. C., May 17, 1900.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, requesting information relative to the pardon of Tomas Vasquez and concerning the matter of Jose Juan Vidal et al., petitioners.

In reply I beg to advise you that in answer to this Department's cablegram, Brig. Gen. George W. Davis, commanding the department of Porto Rico, on the 15th instant, replied as follows:

"Tomas Vasquez, for himself and others convicted of election frauds, accepted pardon thankfully, as did their attorney, both in writing. The result of the Guayama election was announced in paragraph 4, Special Orders 220, 1899, and those named therein were in office April 30. Secretary of Porto Rico says no subsequent changes reported. Stay of execution of decree provisional court, declaring incumbent illegally in office, operates until Supreme Court decides. See my General Order 216, 1899, also report of pardon by mail May 8."

A copy of his letter of May 8, above referred to, is herewith inclosed, together with copies of the general orders mentioned.

Very respectfully,

G. D. MEIKLEJOHN,
Assistant Secretary of War.

The Honorable SOLICITOR-GENERAL,
Department of Justice.

(Inclosures, as above.)

HEADQUARTERS DEPARTMENT
OF PORTO RICO,
San Juan, May 8, 1900.

ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

SIR: I inclose herewith a copy of General Order 96 from these headquarters, concerning which it may not be inappropriate for me to make the statement that the considerations leading to its issuance, other than those recited in this order, were that the pardon was asked for by the persons under sentence; that such clemency was desired by a large number of the inhabitants; that public sentiment in Porto Rico would not, in my belief, have justified or approved a sentence of imprisonment in these cases; and, finally, I felt that it would be appropriate for me to take this action, almost the final one of the military government, and spare these men from the physical effects of the sentence for violation of a law, which violation was made a crime by military order promulgated by me.

In deciding upon this course of action I gave no

consideration to the bearing it might have upon any political, legal, or legislative situation in the United States.

Very respectfully,

GEO. W. DAVIS,
Brigadier-General, Commanding.

GENERAL ORDERS, No. 96. } HDQRS. DEPARTMENT OF PORTO RICO, *San Juan, April 30, 1900.*

The following named persons:

Tomas Vasquez,	Prudencio de Jesus,
Placido Ledee,	Anacyto Flores,
Ramon Baez,	Manuel Cintron,
Teodoro Marsan,	Alfredo Cintron,
Felipe Rodriguez,	Cristobal Diaz,
Santiago Morales,	Jose Federico Correa,
Cruz Serrano,	Domingo Roblez,
Miguel Suarez,	Juan Abrosia Suarez,
Mateo Guzman,	Francisco Vasquez,
Ramon Rodriguez,	Braulio Gual,
Jose Ortiz Silva,	Benito Vasquez,
Julio Vasquez,	Marcelino Flores,
Jose M. Torres,	Ramon Ortiz,
Juan Val. Pillot,	Feliz Cruz,
Monserate Gomez,	Luis Cotijo, and
Justo Godineau,	Sandalio Cintron.
Francisco Rivera,	

having been duly tried and convicted by the United States provisional court for the Department of Porto Rico, of the offense of fraudulently voting and controlling others to fraudulently vote at the municipal election of Guayama, and having been

sentenced pursuant to such conviction, and application having been made by counsel in their behalf to the Supreme Court of the United States for writ of habeas corpus and subsequently for writ of certiorari, and no relief having been obtained from the Supreme Court of the United States by reason of limited time available prior to the dissolution of the United States provisional court, and in consideration of the fact that this was the first election held in Porto Rico under the United States system, and of the fact that the offenses were committed in the heat of partisan political contest, and are not of the character of a felony, and in the belief that the trial already had will prove a sufficient warning to these offenders, a full and complete pardon is hereby granted to the aforesaid persons.

By command of Brigadier-General Davis:

WM. E. ALMY,
Acting Adjutant-General.

SPECIAL ORDERS, } HDQRS. DEPARTMENT
OF PORTO RICO,
No. 220. } *San Juan, November 6, 1899.*

* * * * *

4. The following result of the election held in the municipality of Guayama, Porto Rico, on the 31st of October, 1899, in accordance with General Orders, No. 160, current series, these headquarters, is published for the information and guidance of all concerned:

Alcalde, Don José Juan Vidal.

Municipal judge, Don José Gual y Silven.

Suplente municipal judge, Don Julian Vilodas Guilliod.

School trustees: Don Julio S. Bruno, Don Juan Francisco Rivera, Don Manuel L. Aguiar, Don Fernando Calimano, Don Francisco Modesto Giraud.

Councilmen: Don Modesto Bird y Leon, Don Manuel Lopez Collazo, Don Tomas Vazquez Rivera, Don Luis E. Castagnet Cintron, Don Modesto Ramos Cintron, Don Sergio de la Mata Dalman, Don Domino Pales Anes, Don Joaquin Fernandez Colon, Don Gabriel Capo y Cintron, Don Edgardo Vazquez Aguilar, Dr. Don E. Gonzales Tatgreen, Don Genaro Cautino Vazquez.

Capt. F. W. Foster, Fifth U. S. Cavalry, will proceed at once to Guayama and install the successful candidates into their respective offices. Upon completion of this duty Captain Foster will return to his proper station at Cayey.

The travel enjoined is necessary for the public service.

* * * * *

By command of Brigadier-General Davis:

W. P. HALL,
Adjutant-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. —.

EX PARTE: IN THE MATTER OF THOMAS VASQUEZ, PETITIONER.

EX PARTE: IN THE MATTER OF JOSÉ JUAN VIDAL ET AL., PETITIONERS.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES PROVISIONAL COURT FOR PORTO RICO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These applications, like that in the Baez case, grow out of the Guayama municipal election frauds, conceived and carried out by Thomas Vasquez, through Ramon Baez and thirty-two others, for the benefit of Vidal and

his associates, who, though ousted by the judgment of the Porto Rican court, are still in office under a stay, pending their application.

Vasquez asks the court to take the exceptional course of issuing a writ of certiorari, as at common law, to review and set aside the judgment of the United States provisional court for the Department of Porto Rico, sentencing him to pay a fine for influencing Baez to vote illegally at this election.

Vidal and others request the court to issue the same writ to review and set aside the judgment of the provisional court in a proceeding in the nature of quo warranto, ousting them from the municipal offices of Guayama, which they obtained by fraud.

On behalf of Vasquez, it is insisted, among other things, that there was no warrant in law for the Guayama municipal election (Vasquez's petition, p. 12), and therefore no authority to punish anyone for illegal conduct in connection with the election.

On the other hand, it is contended on behalf of Vidal and others that the Guayama municipal election was lawful and conferred upon them "substantial and valuable rights of which the judgment of ouster deprives them without due process of law" (Vidal's petition, p. 18).

Let me recount the material facts to be considered:

(1) Prior to the cession of Porto Rico the island was under the rule of Spain. The civil law obtained. The jury system contemplated by our Constitution was unknown. In a modified form the jury system exists today in Spain, but had never been extended to Porto

Rico (Walton's Civil Law in Spain and Spanish America, ed. 1900, p. 498).

(2) Under the protocol of August 12, 1898, the United States occupied Porto Rico, and on October 18, 1898, General Brooks, in compliance with the orders of the President, assumed command and, by General Orders, No. 1, established the Department of Porto Rico. Since that time the government of the island has been conducted by the President, through the War Department, awaiting the action of Congress with respect to its future disposition and government.

(3) On April 11, 1899, ratifications were exchanged and the Treaty of Paris proclaimed. By this treaty Spain ceded to the United States the island of Porto Rico. (Article II.) Spanish subjects, natives of the peninsula, residing in Porto Rico, were given one year from the exchange of the raitfications—that is, until April 11, 1900—to preserve their allegiance to Spain by making a declaration in a court of record. In default of the declaration within the year they are to be held "to have adopted the nationality of the territory in which they may reside." (Article IX.) The power of determining the "civil rights and political status of the native inhabitants" of Porto Rico was reserved to Congress. (Article IX.) I am at a loss to understand why the eleventh article is referred to in these applications, as it relates only to Spaniards.

(4) On June 27, 1899, by General Orders, No. 88, the United States provisional court for the Department of Porto Rico was established. This was a military tribunal or commission, composed of a law judge, an

American lawyer, and two associate judges, officers of the Fifth Cavalry, with an officer as clerk and a trooper as marshal.

(5) On September 21, 1899, by General Orders, No. 145, as subsequently amended, provisions were made for municipal elections to be held under the military authority. The local governments thus to be established were provisional and for experimental and educational purposes. In the order, after defining the qualifications of voters, it was provided:

> Any person who fraudulently votes, or attempts or offers to fraudulenty vote, or attempts to influence or control others to fraudulently vote at any public election, shall, upon conviction thereof, be subjected to a fine not exceeding $100 or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, at the discretion of the court.

(6) Under these orders a municipal election was held at Guayama on October 31, 1899. Vasquez was charged in the information (petition, p. 2) with influencing Baez to vote fraudulently at this election. After moving to quash and demurring, it was agreed in open court (petition, p. 5) to submit the case upon the evidence introduced in the cases against Miguel Cintron and Ramon Baez. Thereupon the court found Vasquez guilty, and sentenced him to pay a fine of $70, and in default to be confined at hard labor in the carcel of Humacao for for a period of thirty days (petition, p. 5). In thirty-one other cases Vasquez entered a plea of *nolo contendere*, whereupon the court found him guilty in each case, and

in each sentenced him to pay a fine of $30, and in default be confined at hard labor in the carcel at Humacao for a period of ten days (petition, p. 5).

(7) In the case of Vidal and others, W. T. Abbott, an attorney residing in San Juan, was employed to investigate the Guayama election. His report appears in the form of an affidavit in the record (pp. 1 to 3) and was the basis for the information in quo warranto subsequently filed. In brief, he found upon investigation that Vasquez procured 33 persons to register fraudulently and to vote illegally at the election for the candidates of the Federal party; that these candidates were elected by 13 votes, much less than the number of votes fraudulently cast for them. He therefore recommended that an information in the nature of quo warranto be filed to oust Vidal and others from the offices which they had obtained by fraud. The information first filed by the United States attorney was brought in the name of "The People of the Department of Porto Rico" on the relation of the United States attorney, but upon objection being made it was amended, and an information was filed in the name of the United States of America on the relation of the United States attorney for the Department of Porto Rico. After insisting the court had no right to permit the amendment, the respondents demurred to the information on the ground that the action could not be maintained and the court had no jurisdiction of the cause. This being overruled, the defendants declined to plead further, and a judgment of ouster was entered.

(8) On April 12, 1900, Congress passed an act "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," which takes effect on May 1, 1900. The act is printed as an appendix to this brief. I shall later refer to pertinent provisions recognizing and ratifying the action of the military provisional government establishing a civil government and leaving no need or excuse for the direct applications made to this court in these cases. A resolution extending the time for the appointment and qualification of officers under this act to August 1, 1900, is now in conference. Until that time those now in office may continue to discharge the duties of their offices under the act of Congress. *But the military government ends on May 1, 1900.*

ARGUMENT.

I.

In my brief in the Ramon Baez case, I submitted that the provisional court of Porto Rico was not within the territorial jurisdiction of this court for the reason that it derived its power from the military arm of the Government and no steps had then been taken by Congress to extend the judicial power of the United States over Porto Rico. This point will not apply after the 1st of May, when the act of Congress providing a civil government for Porto Rico and creating the island a judicial district goes into effect. After that date, while the provisional court may continue to discharge its duties, it will do so under Congressional authority pending the appointment and qualification (prior to August 1, 1900) of a district

judge for Porto Rico. The effect the change of government in Porto Rico from a military to a civil government should have in considering the applications made to the court in these cases, I shall refer to later.

II.

In my brief in the Baez case, I presented fully the following propositions:

(*a*) The guarantees for a grand jury and a petit jury provided in the fifth and sixth amendments only operate where the crime charged is an infamous one. The offense of voting or inducing another to vote illegally at a municipal election held under the military orders in question was not an infamous crime. As defined and punished it was a mere misdemeanor.

(*b*) The provisions of the fifth and sixth amendments, requiring an indictment by a grand jury and a trial by a petit jury, did not and could not apply to Porto Rico while under military rule and before Congress had provided a form of government.

I refer the court to that brief for the reasons and the authorities.

III.

In the Ramon Baez case, it was the contention of counsel that, upon the exchange of ratifications, Porto Rico became a part of the United States to which the Constitution and the laws immediately extended and became applicable *ex proprio vigore*.

Now the contention is that as soon as the treaty was ratified and proclaimed, the authority of the President

to govern Porto Rico through a provisional government, with its laws and ordinances, courts and officers, virtually ceased; that he was without power, in the absence of legislation by Congress, to regulate civil affairs by military orders; that he could not provide for municipal elections and guard the same; that he was powerless to create or continue the provisional court for the purpose of enforcing the laws and orders promulgated by the United States. In short, the contention now is that after peace, and until Congress should act, Porto Rico must be governed solely by the old Spanish laws and customs as enforced by the existing insular tribunals. However bad or insufficient these might be, in view of changed conditions, the President was helpless. He must stand by and let things go from bad to worse awaiting the action of Congress. No provisional civil government for the purpose of educating the people and preparing them for the new conditions following a change of sovereignty was possible according to the theory of my opponents.

It is unnecessary for me to comment upon the remarkable character of this proposition. No reputable authority in support of it has been cited or can be found. The authority of the President to govern territory acquired by treaty until Congress sees fit to act is amply sustained by the decisions of this court. While the source of this authority is military, the authority itself is not limited to purely military matters, but extends to the regulation of civil affairs within the occupied territory. The object of the President is to establish and maintain a provisional civil government, for the preservation of order and the protection of life, liberty, and property,

pending the action of Congress. Substantially all those things which can be dealt with by the civil government when established by Congress may be regulated by the provisional government instituted during the so-called military occupation. The source of authority in the case of the provisional government is the President, the laws and ordinances are the military orders, the courts and officers are in a sense military tribunals and agencies, but all the means of carrying on a civil government are provided, and the action of these authorities in preserving order and advancing the interests of the people of the territory is as valid and effective as if they had back of them the legislative instead of the Executive power of the United States. Indeed, history shows that the President has endeavored, in ruling temporarily newly acquired territory, to blaze the way for Congress by establishing a provisional government, with laws and ordinances, that might substantially be continued. And Congress has recognized this fact in the past, and indeed in the present instance, by virtually ratifying the action of the President. The military orders were continued in force as laws and the civil courts made the successors of the so-called provisional tribunals.

In support of the broad authority of the President during military occupation to establish a provisional civil government with full powers, which shall continue in force until the government created by Congress takes hold, I refer the court to the following cases:

Jecker v. *Montgomery*, 13 How., 498 (1851). Taney, C. J.

During the Mexican war an American vessel, *The*

Admittance, was captured on the coast of California and condemned for trading with the enemy by a prize court established at Monterey by the military officer exercising the functions of government of that province, which had been taken possession of by the American forces. The court held that the so-called prize court was without jurisdiction.

Taney, C. J., page 515:

> All captures *jure belli* are for the benefit of the sovereign under whose authority they are made; and the validity of the seizure and the question of prize or no prize can be determined in his courts only, upon which he has conferred jurisdiction to try the question. And under the Constitution of the United States the judicial power of the General Government is vested in one Supreme Court, and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or laws of the United States. And neither the President nor any military officer can establish a court in a conquered country, and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations.
>
> The courts, established or sanctioned in Mexico during the war by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer

thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize. And the sentence of condemnation in the court at Monterey is a nullity, and can have no effect upon the rights of any party.

Cross v. *Harrison*, 16 How., 164. (1853.) Wayne, J.

Suit to recover back money paid to Harrison, collector at San Francisco, from February 3, 1848, to November 12, 1849. On February 3, 1848, the treaty between Mexico and the United States was signed. On March 3, 1849, an act of Congress was passed creating the collection district of California. On November 12, 1849, the collector appointed under this act arrived at San Francisco and entered upon his duties. Harrison was appointed collector under the military occupation prior to the treaty of peace, and the question was whether he had authority to act after the treaty of peace and until the collector appointed under the act of Congress assumed charge.

The conclusion of the court is thus stated by Mr. Justice Wayne, page 195:

> Our conclusion, from what has been said, is, that the civil government of California, organized as it was from a right of conquest, did not cease or become defunct in consequence of the signature of the treaty or from its ratification. We think it was continued over a ceded conquest, without any violation of the Constitution or laws of the United States, and, that until Congress legislated for it, the duties upon foreign goods imported into San Francisco were legally demanded and lawfully received by

Mr. Harrison, the collector of the port, who received his appointment, according to instructions from Washington, from Governor Mason.

The reasons for this conclusion are thus stated, page 193:

> The territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. That sovereignty was the United States, under the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in the section in which this power is given. The Government, of which Colonel Mason was the executive, had its origin in the lawful exercise of a belligerent right over a conquered territory. It had been instituted during the war by the command of the President of the United States. It was the government when the territory was ceded as a conquest, and it did not cease, as a matter of course, or as a necessary consequence of the restoration of peace. The President might have dissolved it by withdrawing the army and navy officers who administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is, that it was meant to be continued until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the government. And the more so as it was continuen until the people of the territory met in conventiod to form a State government, which was subsequently

recognized by Congress under its power to admit new States into the Union.

Leitensdorfer et al. v. *Webb*, 20 How., 176. (1857.)

Upon the acquisition, in 1846, of New Mexico by conquest, General Kearny, then in command, established a provisional government with a judicial system for the preservation of order and the protection of life and property in the Territory. The treaty of peace which ended the war with Mexico confirmed the possession of the United States, and the provisional government continued in force until, on September 9, 1850, the act of Congress was approved establishing a territorial government for New Mexico.

This suit was a proceeding by writ of attachment brought in a court of the provisional government and subsequently, in 1851, under the provision of the act establishing the territorial government, transferred to the district court for the Territory. While it was conceded that the provisional courts had jurisdiction during the war, it was contended that upon the termination of the war and the cession of the territory by the treaty of peace, the provisional government terminated. Respecting this contention the court, speaking by Mr. Justice Daniel, said, page 178:

> The fallacy of this pretension is exposed by the fact that the territory never was relinquished by the conqueror, nor restored to its original condition or allegiance, but was retained by the occupant until possession was matured into absolute permanent dominion and sovereignty; and this, too, under the settled purpose of the United States never to relinquish the possession acquired by arms. We con-

clude, therefore, that the ordinances and institutions of the provisional government would be revoked or modified by the United States alone, either by direct legislation on the part of the Congress, or by that of the territorial government in the exercise of powers delegated by Congress.

The Grapeshot, 9 Wall.. 129 (1869).

The original suit was a libel on a bottomry bond, brought in the district court of the United States for the district of Louisiana before the civil war. A decree was rendered in that court from which an appeal was taken to the circuit court, where the case was pending when the proceedings of the court were interrupted by the war. In 1862, when the troops of the United States occupied New Orleans, a provisional court was established, to which the cause was transferred, and again a decree was rendered in favor of the libellants. After the war, by act of Congress, the jurisdiction of the circuit court being reestablished, all decrees of the provisional court were transferred to it.

The court, Chief Justice Chase delivering the opinion, sustained the authority of the President in establishing the provisional court. The cases of *Leitensdorfer* v. *Webb*, *Jecker* v. *Montgomery*, and *Cross* v. *Harrison* are cited with approval as illustrations of the principles applicable to military occupation.

Page 133:

> We have no doubt that the provisional court of Louisiana was properly established by the President in the exercise of his constitutional authority during war; or that Congress had power, upon the close of the war, and the dissolution of the provi-

sional court, to provide for the transfer of cases pending in that court, and of its judgments and decrees, to the proper courts of the United States.

IV.

Conceding that the court has no appellate jurisdiction n the premises, counsel asks the court to exercise an nusual and exceptional power and issue two writs of ertiorari as at common law.

In the case of *Durousseau* v. *The United States* 6 Cranch, 307) Chief Justice Marshall used the fol- owing language respecting the limited character of the ppellate jurisdiction of this court (p. 314):

> When the first legislature of the Union proceeded to carry the third article of the Constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court. They have not, indeed, made these exceptions in express terms. They have not declared that the appellate power of the court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it.

In *Ex parte Vallandigham* (1 Wall., 243) this court eld it had no power to review by certiorari the proceed- ngs of a military commission. Mr. Justice Wayne, peaking for the court, said (p. 251):

> The appellate powers of the Supreme Court as granted by the Constitution are limited and regulated by the acts of Congress, and must be exercised

> subject to the exceptions and regulations made by Congress. In other words, the petition before us we think not to be within the letter or spirit of the grants of appellate jurisdiction to the Supreme Court. It is not in law or equity within the meaning of those terms as used in the third article of the Constitution. Nor is a military commission a court within the meaning of the fourteenth section of the judiciary act of 1789.

Page 253:

> In *Ex parte Metzger* it was determined that a writ of certiorari could not be allowed to examine a commitment by a district judge under the treaty between the United States and France, for the reason that the judge exercised a special authority, and that no provision had been made for the revision of his judgment. So does a court of military commission exercise a special authority.

In the case of *United States* v. *Young* (94 U. S., 258), while an appeal from the Court of Claims was pending in the Supreme Court, the Court of Claims granted a new trial. Thereupon the United States moved to dismiss the appeal, while Young applied for a writ of certiorari to bring before the Supreme Court the proceedings under which the new trial was granted and thus retain the cause here. The court denied the writ, saying, by Chief Justice Waite (p. 259):

> We have only such appellate jurisdiction as has been conferred by Congress, and in the exercise of such as has been conferred we can proceed only in the manner which the law prescribes. (*Barry* v. *Mercein*, 5 How., 119; *Durousseau* v. *United States*, 6 Cranch, 314; *United States* v. *Curry*, 6 How., 113; *Ex parte Vallandigham*, 1 Wall., 251.)

From the judgments of the Court of Claims appeals are allowed to this court (sec. 707, Rev. Stat.), but no provision has been made for writs of error. Consequently we can not proceed by writ of error to review the decisions of that court.

At common law the writ of certiorari is used for two purposes: (1) As an appellate proceeding for the reexamination of some action of an inferior tribunal, and (2) as auxiliary process to enable a court to obtain further information in respect to some matter already before it for adjudication. It is for the last purpose only that the writ is employed in this court.

In *Luxton* v. *North River Bridge Company* (147 U. S. 337), it was held that an order made by the United States circuit court appointing commissioners to assess damages for the condemnation of land for the approaches of a bridge across the Hudson River was not a final order to which a writ of error lay in the Supreme Court. Mr. Justice Gray, speaking for the court, said (p. 341):

> The action of that court in this case, as in other cases on the common law side, is not reviewable by this court by writ of certiorari (*United States* v. *Young*, 94 U. S., 258), but only by writ of error, which does not lie until after final judgment, disposing of the whole case and adjudicating all the rights, whether of title or of damages, involved in the litigation.

In *American Construction Co.* v. *Jacksonville, etc., Ry.* (148 U. S., 372), Mr. Justice Gray, speaking for the court, used the following language (p. 378):

> By the Constitution of the United States, in cases to which the judicial power of the United States ex-

tends and of which original jurisdiction is not conferred on this court, "the Supreme Court shall have appellate jurisdiction, with such exceptions and under such regulations as the Congress shall make." Constitution, article 3, section 2. This court, therefore, as it has always held, can exercise no appellate jurisdiction except in the cases and in the manner and form defined and prescribed by Congress. (*Wiscart* v. *Dauchy*, 3 Dall., 321, 327; *Durousseau* v. *United States*, 6 Cranch, 307, 314; *Barry* v. *Mercein*, 5 5 How., 103, 119; *United States* v. *Young*, 94 U. S., 258; *The Francis Wright*, 105 U. S., 381; *National Exchange Bank* v. *Peters*, 144 U. S., 570, 572.)

Under the judiciary act of 1789 and other acts embodied in the Revised Statutes, the appellate jurisdiction of this court from the circuit court of the United States was limited to final judgments at law and final decrees in equity or admiralty. (Acts of September 24, 1789, c. 20, ss. 13, 22, 1 Stat., 81, 84; March 3, 1803, c. 40, 2 Stat., 244; Rev. Stat., ss. 691, 692.)

Bottom page 379:

This court and the circuit and district courts of the United States have also been empowered by Congress "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law." (Act of September 24, 1789, c. 20, ss. 14, 1 Stat., 81; Rev. Stat., s. 716.)

Under this provision the court might doubtless issue writs of certiorari in proper cases. But the writ of certiorari has not been issued as freely by this court as by the Court of Queen's Bench in England. (*Ex parte Vallandigham*, 1 Wall., 243,

249.) It was never issued to bring up from an inferior court of the United States for trial a case within the exclusive jurisdiction of a higher court. (*Fowler* v. *Lindsey*, 3 Dall., 411, 413; *Patterson* v. *United States*, 2 Wheat., 221, 225, 226; *Ex parte Hitz*, 111 U. S., 766.) It was used by this court as an auxiliary process only, to supply imperfections in the record of a case already before it, and not, like a writ of error, to review the judgment of an inferior court. (*Barton* v. *Petit*, 7 Cranch, 288; *Ex parte Gordon*, 1 Black., 503; *United States* v. *Adams*, 9 Wall., 661; *United States* v. *Young*, 94 U. S., 258; *Luxton* v. *North River Bridge Co.*, 147 U. S., 337, 341.)

On page 383 Mr. Justice Gray points out that the ower to review by certiorari under the act of 1891 y the Supreme Court is "a branch of its jurisdiction hich should be exercised sparingly and with great aution, and only in cases of peculiar gravity and general nportance, or in order to secure uniformity of decision." iting *Lau Ow Bew's case*, 141 U. S., 583, and 144 . S., 47; *In re Woods*, 143 U. S., 202.

In *Forsyth* v. *Hammond* (166 U. S., 506), a case on rtiorari under the act of 1891, Mr. Justice Brewer, eaking for the court, explaining the reason for the proision authorizing the court to bring any case to the upreme Court for review by a writ of certiorari, said . 512) that—

> Cases of a class in which finality of decision was given to the circuit courts of appeal might involve questions of such public and national importance as to require that a consideration and determination thereof should be made by the supreme tribunal of the nation.

Bottom page 513:

> So it has been that this court, while not doubting its power, has been chary of action in respect to certioraries. It has said: "It is evident that it is solely questions of gravity and importance that the circuit courts of appeal should certify to us for instruction; and that it is only when such questions are involved that the power of this court to require a case in which the judgment and decree of the court of appeals is made final, to be certified, can be properly invoked." (*Lau Ow Bew, petitioner*, 141 U. S., 583, 587; *In re Woods*, 143 U. S., 202; *Lau Ow Bew* v. *United States*, 144 U. S., 47, 58; *American Construction Co.* v. *Jacksonville Railway Company*, 148 U. S., 372, 383.)

Bottom page 514:

> We reaffirm in this case the propositions heretofore announced, to wit, that the power of this court in certiorari extends to every case pending in the circuit courts of appeal, and may be exercised at any time during such pendency, provided the case is one which but for this provision of the statute would be finally determined in that court. And further, that while this power is coextensive with all possible necessities and sufficient to secure to this court a final control over the litigation in all the courts of appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal or between courts of appeal and the courts of a State, or some matter affecting the interests of this nation in its internal or external relations, demands such exercise.

It is true that in the case of *In re Chetwood* (165 U. S., 443) Chief Justice Fuller said that although prior to

the act of March 3, 1891, the writ of certiorari had been ordinarily used as an auxiliary process merely, yet "whenever the circumstances *imperatively demand* that form of interposition the writ may be allowed, as at common law, to prevent excesses of jurisdiction and in furtherance of justice."

But in the subsequent case of *In re Tampa Suburban Railroad Company* (168 U. S., 585) the Chief Justice explained (p. 587):

> In the case of *In re Chetwood* (165 U. S., 443, 451), we allowed the writ to bring up for review certain final orders of the circuit court, *which interfered with causes pending in this court*, and the question of the issue of the writ by this court, in the exercise of its inherent general powers under the Constitution, did not arise.

And in the latter case (*In re Tampa Suburban Railroad Company*) the court declined to issue the writ, holding that the petitioner had another adequate remedy.

If the court should issue the writs prayed for in these cases it will be the first time in the history of the court that the power appealed to has been exercised. To justify such unprecedented action, the circumstances of these cases must *imperatively demand* (*In re Chetwood*, 165 U.S., 462) the form of interposition. Do they? These cases are not important. The questions involved are not grave nor the results to the petitioners serious. The cases are of a common, even vulgar nature—fraud in a petty municipal election. The Guayama election was to select officers for experimental and temporary purposes. The island was under military rule. The officers to be elected were

the agencies of the military power, removable at any time. The franchise offered to the inhabitants of the town was a privilege which could be accepted or declined at will. Nobody was compelled to be a candidate or to vote. Those who took part as candidates or electors acted without compulsion, and voluntarily brought themselves within the terms of the military orders; of their own accord subjected themselves to its penalties, and in effect submitted themselves to the jurisdiction of the United States provisional court charged with its enforcement. The general in command said to the Porto Ricans: You may participate in the government intrusted to me upon certain conditions, but if you violate these conditions I will punish you through the agency of the provisional court. These men accepted the boon, they must bear the burden; they enjoyed the privilege, they must pay the price. It does not lie in the mouth of any of them to say there was no law for the election, and no authority in the provisional court either to punish offenses committed in connection with the election, or to oust officers who were selected by fraud at the election. If there was law enough to elect Vidal and his associates, there was law enough to oust them for fraud and to punish Vasquez for the fraud.

I particularly call the court's attention to the fact that the defenses made by the petitioners in the provisional court were purely technical. They did not deny the frauds; they made no defense upon the merits. The thirty-three ignorant Porto Ricans whom Vasquez used to carry the Guayama election were all convicted before any steps were taken against him. He voluntarily sub-

mitted his case on the evidence introduced against two of them, and was convicted. But while they were sent to jail, he was only fined, and my information is he is amply able to pay the fines.

No action was taken against Vidal and his associates until the frauds had been established by the conviction of the thirty-three illegal voters. It became clear then beyond a peradventure that the election had been carried by fraud, and that Vidal and his associates ought to be ousted. The only plea they made was that there was no power in the provisional court to oust them. They did not deny the frauds.

The court is asked in these cases to exercise an exceptional power *not in order to do justice, but to prevent justice being done.*

V.

A reading of the act of Congress providing a civil government will satisfy the court that if the petitioners, or any of them, suffered any injustice at the hands of the provisional court, an adequate remedy is afforded them by a resort to the tribunals established in Porto Rico by this law. If the court which convicted Vasquez was without jurisdiction and if he desires to test that question by refusing to pay his fine and going to jail, he can apply to the proper court, now established by law, for a writ of habeas corpus. So, in the case of Vidal and his associates, an appeal, by way of injunction or otherwise, to the legally constituted courts in Porto Rico is open to them if the provisional court was without authority and its action void.

It will be time enough for this court to consider and determine questions growing out of the government of Porto Rico when they reach the court in a proper way and through the regular channels.

JOHN K. RICHARDS,
Solicitor-General.

APRIL 28, 1900.

APPENDIX.

AN ACT Temporarily to provide revenues and a civil government for Porto Rico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to the island of Porto Rico and to the adjacent islands and waters of the islands lying east of the seventy-fourth meridian of longitude west of Greenwich, which were ceded to the United States by the Government of Spain by treaty entered into on the tenth day of December, eighteen hundred and ninety-eight; and the name Porto Rico, as used in this Act, shall be held to include not only the island of that name, but all the adjacent islands as aforesaid.

SEC. 2. That on and after the passage of this Act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries: *Provided*, That on all coffee in the bean or ground imported into Porto Rico there shall be levied and collected a duty of five cents per pound, any law or part of law to the contrary notwithstanding: *And provided further*, That all Spanish scientific, literary, and artistic works, not subversive of public order into Porto Rico, shall be admitted free of duty into Porto Rico for a period of ten years, reckoning from the eleventh day of April, eighteen hundred and ninety-nine, as provided in said treaty of peace between the United States and

Spain: *And provided further*, That all books and pamphlets printed in the English language shall be admitted into Porto Rico free of duty when imported from the United States.

SEC. 3. That on and after the passage of this Act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and in addition thereto upon articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale upon payment of a tax equal to the internal-revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps to be purchased and provided by the Commissioner of Internal Revenue and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and on all articles of merchandise of United States manufacture coming into Porto Rico in addition to the duty above provided upon payment of a tax equal in rate and amount to the internal-revenue tax imposed in Porto Rico upon the like articles of Porto Rican manufacture: *Provided*, That on and after the date when this Act shall take effect, all merchandise and articles, except coffee, not dutiable under the tariff laws of the United States, and all merchandise and articles entered in Porto Rico free of duty under orders heretofore made by the Secretary of War, shall be admitted into the several ports thereof, when imported

from the United States, free of duty, all laws or parts of laws to the contrary notwithstanding; and whenever the legislative assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico.

SEC. 4. That the duties and taxes collected in Porto Rico in pursuance of this Act, less the cost of collecting the same, and the gross amount of all collections of duties and taxes in the United States upon articles of merchandise coming from Porto Rico, shall not be covered into the general fund of the Treasury, but shall be held as a separate fund, and shall be placed at the disposal of the President to be used for the government and benefit of Porto Rico until the government of Porto Rico herein provided for shall have been organized, when all moneys theretofore collected under the provisions hereof, then unexpended, shall be transferred to the local treasury of Porto Rico, and the Secretary of the Treasury shall designate the several ports and subports of entry in Porto Rico and shall make such rules and regulations and appoint such agents as may be necessary to collect the duties and taxes authorized to be levied, collected, and paid in Porto Rico by the provisions of this Act, and he shall fix the compensation and provide for the payment thereof of all such

officers, agents, and assistants as he may find it necessary to employ to carry out the provisions hereof: *Provided, however*, That as soon as a civil government for Porto Rico shall have been organized in accordance with the provisions of this Act and notice thereof shall have been given to the President he shall make proclamation thereof, and thereafter all collections of duties and taxes in Porto Rico under the provisions of this Act shall be paid into the treasury of Porto Rico, to be expended as required by law for the government and benefit thereof instead of being paid into the Treasury of the United States.

SEC. 5. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported from Porto Rico, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act, and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

GENERAL PROVISIONS.

SEC. 6. That the capital of Porto Rico shall be at the city of San Juan and the seat of government shall be maintained there.

SEC. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, *shall be deemed and held to be citizens of Porto*

Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; and they, together with such citizens of the United States as may reside in Porto Rico, *shall constitute a body politic under the name of The People of Porto Rico*, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.

SEC. 8. *That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by Act of Congress of the United States: Provided*, That so much of the law which was in force at the time of cession, April eleventh, eighteen hundred and ninety-nine, forbidding the marriage of priests, ministers, or followers of any faith because of vows they may have taken, being paragraph four, article eighty-three, chapter three, civil code, and which was continued by the order of the secretary of justice of Porto Rico, dated March seventeenth, eighteen hundred and ninety-nine, and promulgated by Major-General Guy V. Henry, United States Volunteers, is hereby repealed and annulled, and all persons lawfully married in Porto Rico shall have all the rights and remedies conferred by law upon parties to either civil or religious marriages: *And provided further*, That paragraph one, article one hundred and five, section four, divorce, civil

code, and paragraph two, section nineteen, of the order of the minister of justice of Porto Rico, dated March seventeen, eighteen hundred and ninety-nine, and promulgated by Major-General Guy V. Henry, United States Volunteers, be, and the same hereby are, so amended as to read: "Adultery on the part of either the husband or the wife."

SEC. 9. That the Commissioner of Navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels owned by the inhabitants of Porto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.

SEC. 10. That quarantine stations shall be established at such places in Porto Rico as the Supervising Surgeon-General of the Marine-Hospital Service of the United States shall direct, and the quarantine regulations relating to the importation of diseases from other countries shall be under the control of the Government of the United States.

SEC. 11. That for the purpose of retiring the Porto Rican coins now in circulation in Porto Rico and substituting therefor the coins of the United States, the Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico known as the peso and all other silver and copper Porto Rican coins now in circulation in Porto Rico, not including any such coins that may be imported into Porto Rico after the first day of February, nineteen

hundred, at the present established rate of sixty cents in the coins of the United States for one peso of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied. The Porto Rican coins so purchased or redeemed shall be recoined at the expense of the United States, under the direction of the Secretary of the Treasury, into such coins of the United States now authorized by law as he may direct, and from and after three months after the date when this Act shall take effect no coins shall be a legal tender, in payment of debts thereafter contracted, for any amount in Porto Rico, except those of the United States; and whatever sum may be required to carry out the provisions hereof, and to pay all expenses that may be incurred in connection therewith, is hereby appropriated, and the Secretary of the Treasury is hereby authorized to establish such regulations and employ such agencies as may be necessary to accomplish the purposes hereof: *Provided, however*, That all debts owing on the date when this Act shall take effect shall be payable in the coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named.

SEC. 12. That all expenses that may be incurred on account of the government of Porto Rico for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the island, not, however, including defenses, barracks, harbors, light-houses, buoys, and other works undertaken by the United States, shall be paid by the treasurer of Porto Rico out of the revenues in his custody.

SEC. 13. That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in said treaty of peace in any public bridges, road houses, water powers, highways, unnavigable streams, and the beds thereof, subterranean waters,

mines, or minerals under the surface of private lands, and all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor-works boards of Porto Rico, and all the harbor shores, docks, slips, and reclaimed lands, but not including harbor areas or navigable waters, is hereby placed under the control of the government established by this Act to be administered for the benefit of the people of Porto Rico; and the legislative assembly hereby created shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable.

SEC. 14. *That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States*, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.

SEC. 15. That the legislative authority hereinafter provided shall have power by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act, as it may from time to time see fit.

SEC. 16. That all judicial process shall run in the name of "United States of America, ss: the President of the United States," and all criminal or penal prosecutions in the local courts shall be conducted in the name and by the authority of "The people of Porto Rico;" and all officials authorized by this Act shall before entering upon the duties of their respective offices take an oath to support the Constitution of the United States and the laws of Porto Rico.

THE GOVERNOR.

SEC. 17. That the official title of the chief executive officer shall be "The Governor of Porto Rico." He

shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for a term of four years and until his successor is chosen and qualified unless sooner removed by the President; he shall reside in Porto Rico during his official incumbency, and shall maintain his office at the seat of government; *he may grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws of Porto Rico, and respites for offenses against the laws of the United States, until the decision of the President can be ascertained;* he shall commission all officers that he may be authorized to appoint, and may veto any legislation enacted, as hereinafter provided; he shall be the commander in chief of the militia, and shall at all times faithfully execute the laws, and he shall in that behalf have all the powers of governors of the Territories of the United States that are not locally inapplicable; and he shall annually, and at such other times as he may be required, make official report of the transactions of the government in Porto Rico, through the Secretary of State, to the President of the United States: *Provided*, That the President may, in his discretion, delegate and assign to him such executive duties and functions as may in pursuance with law be so delegated and assigned.

THE EXECUTIVE COUNCIL.

SEC. 18. That there shall be appointed by the President, by and with the advice and consent of the Senate, for the period of four years, unless sooner removed by the President, a secretary, an attorney-general, a treasurer, an auditor, a commissioner of the interior, and a commissioner of education, each of whom shall reside in Porto Rico during his official incumbency and have the powers and duties hereinafter provided for them, respectively, and who, together with five other persons of good

repute, to be also appointed by the President for a like term of four years, by and with the advice and consent of the Senate, shall constitute an executive council, at least five of whom shall be native inhabitants of Porto Rico, and, in addition to the legislative duties hereinafter imposed upon them as a body, shall exercise such powers and perform such duties as are hereinafter provided for them, respectively, and who shall have power to employ all necessary deputies and assistants for the proper discharge of their duties as such officials and as such executive council.

SEC. 19. That the secretary shall record and preserve minutes of the proceedings of the executive council and the laws enacted by the legislative assembly and all acts and proceedings of the governor, and shall promulgate all proclamations and orders of the governor and all laws enacted by the legislative assembly. He shall, within sixty days after the end of each session of the legislative assembly, transmit to the President, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of State of the United States one copy each of the laws and journals of such session.

SEC. 20. That in case of the death, removal, resignation, or disability of the governor, or his temporary absence from Porto Rico, the secretary shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence.

SEC. 21. That the attorney-general shall have all the powers and discharge all the duties provided by law for an attorney of a Territory of the United States in so far as the same are not locally inapplicable, and he shall perform such other duties as may be prescribed by law, and make such reports, through the governor, to the Attorney-General of the United States as he may require, which shall annually be transmitted to Congress.

SEC. 22. That the treasurer shall give bond, approved as to form by the attorney-general of Porto Rico, in such

sum as the executive council may require, not less, however, than the sum of one hundred thousand dollars, with surety approved by the governor, and he shall collect and be the custodian of the public funds, and shall disburse the same when appropriated by law, on warrants signed by the auditor and countersigned by the governor, and shall perform such other duties as may be prescribed by law, and make, through the governor, such reports to the Secretary of the Treasury of the United States as he may require, which shall annually be transmitted to Congress.

SEC. 23. That the auditor shall keep full and accurate accounts, showing all receipts and disbursements, and perform such other duties as may be prescribed by law, and make, through the governor, such reports to the Secretary of the Treasury of the United States as he may require, which shall annually be transmitted to Congress.

SEC. 24. That the commissioner of the interior shall superintend all works of a public nature, and shall have charge of all public buildings, grounds, and lands, except those belonging to the United States, and shall execute such requirements as may be imposed by law with respect thereto, and shall perform such other duties as may be prescribed by law, and make such reports through the governor to the Secretary of the Interior of the United States as he may require, which shall annually be transmitted to Congress.

SEC. 25. That the commissioner of education shall superintend public instruction throughout Porto Rico, and all disbursements on account thereof must be approved by him; and he shall perform such other duties as may be prescribed by law, and make such reports through the governor as may be required by the Commissioner of Education of the United States, which shall annually be transmitted to Congress.

SEC. 26. That the other five members of the executive council, to be appointed as hereinbefore provided, shall attend all meetings of the executive council and participate in all business of every character that may be transacted by it; and they shall receive as compensation for their services such annual salaries as may be provided by the legislative assembly.

HOUSE OF DELEGATES.

SEC. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly which shall consist of two houses; one the executive council, as hereinbefore constituted, and the other a house of delegates, to consist of thirty-five members elected biennially by the qualified voters as hereinafter provided; and the two houses thus constituted shall be designated "The legislative assembly of Porto Rico."

SEC. 28. That for the purposes of such elections Porto Rico shall be divided by the executive council into seven districts, composed of contiguous territory and as nearly equal as may be in population, and each district shall be entitled to five members of the house of delegates.

ELECTION OF DELEGATES.

SEC. 29. That the first election for delegates shall be held on such date and under such regulations as to ballots and voting as the executive council may prescribe; and at such elections the voters of each legislative district shall choose five delegates to represent them in the house of delegates from the date of their election and qualification until two years from and after the first day of January next ensuing; of all which thirty days' notice shall be given by publication in the Official Gazette, or by printed notices distributed and posted throughout the district, or by both, as the executive council may prescribe.

At such elections all citizens of Porto Rico shall be allowed to vote who have been bona fide residents for one year and who possess the other qualifications of voters under the laws and military orders in force on the first day of March, nineteen hundred, subject to such modifications and additional qualifications and such regulations and restrictions as to registration as may be prescribed by the executive council. The house of delegates so chosen shall convene at the capital and organize by the election of a speaker, a clerk, a sergeant-at-arms, and such other officers and assistants as it may require, at such time as may be designated by the executive council; but it shall not continue in session longer than sixty days in any one year, unless called by the governor to meet in extraordinary session. The enacting clause of the laws shall be, "Be it enacted by the legislative assembly of Porto Rico;" and each member of the house of delegates shall be paid for his services at the rate of five dollars per day for each day's attendance while the house is in session, and mileage at the rate of ten cents per mile for each mile necessarily traveled each way to and from each session of the legislative assembly.

All future elections of delegates shall be governed by the provisions hereof, so far as they are applicable, until the legislative assembly shall otherwise provide.

SEC. 30. That the house of delegates shall be the sole judge of the elections, returns, and qualifications of its members, and shall have and exercise all the powers with respect to the conduct of its proceedings that usually appertain to parliamentary legislative bodies. No person shall be eligible to membership in the house of delegates who is not twenty-five years of age and able to read and write either the Spanish or the English language, or who is not possessed in his own right of taxable property, real or personal, situated in Porto Rico.

SEC. 31. That all bills may originate in either house, but no bill shall become a law unless it be passed in each

house by a majority vote of all the members belonging to such house and be approved by the governor within ten days thereafter. If, when a bill that has been passed is presented to the governor for signature, he approves the same, he shall sign it, or if not he shall return it, with his objections, to that house in which it originated, which house shall enter his objections at large on its journal, and proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be considered, and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered upon the journal of each house, respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly by adjournment prevent its return, in which case it shall not be a law: *Provided, however,* That all laws enacted by the legislative assembly shall be reported to the Congress of the United States, which hereby reserves the power and authority, if deemed advisable, to annul the same.

SEC. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities, so far as may be necessary, and to provide and repeal laws and ordinances therefor; and also the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof: *Provided, however,* That all grants of franchises, rights, and

privileges or concessions of a public or quasi-public nature shall be made by the executive council, with the approval of the governor, and all franchises granted in Porto Rico shall be reported to Congress, which hereby reserves the power to annul or modify the same.

THE JUDICIARY.

SEC. 33. *That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen*, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and *including also the police courts established by General Orders, Numbered One hundred and ninety-five*, promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the municipalities thereof in force, so far as the same are not in conflict herewith, *all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attachés thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders*, Numbered One hundred and eighteen and One hundred and ninety-five, until otherwise provided by law: *Provided, however*, that the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attachés of all the other courts shall be chosen as may be directed by the legislative assembly, which shall

have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, their jurisdiction, their procedure, and all other matters affecting them.

SEC. 34. *That Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." The President, by and with the advice and consent of the Senate, shall appoint a district judge,* a district attorney, and a marshal for said district, each for a term of four years, unless sooner removed by the President. The district court for said district shall be called the *district court of the United States for Porto Rico* and shall have power to appoint all necessary officials and assistants, including a clerk, an interpreter, and such commissioners as may be necessary, who shall have like power and duties as are exercised and performed by commissioners of the circuit courts of the United States, and *shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States,* and shall proceed therein in the same manner as a circuit court. The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said court shall be held at San Juan, commencing on the second Monday in April and October of each year, and also at Ponce on the second Monday in January of each year, and special terms may be held at Mayaguez at such other stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language.

The United States district court hereby established shall be the successor to the United States provisional court, established by General Orders, Numbered Eighty-eight, promulgated by Brigadier-General Davis, United States Volunteers, and shall take possession of all records of that court, and take jurisdiction of all cases and proceedings pending therein, and said United States provisional court is hereby discontinued.

SEC. 35. *That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district and circuit courts of the United States.* All such proceedings in the Supreme Court of the United States shall be conducted in the English language.

SEC. 36. That the salaries of all officials of Porto Rico not appointed by the President, including deputies, assistants, and other help, shall be such, and be so paid out of the revenues of Porto Rico, as the executive council shall from time to time determine: *Provided, however*, That the salary of no officer shall be either increased or diminished during his term of office. The salaries of all officers and all expenses of the offices of the various officials of Porto Rico, appointed as herein provided by the President, including deputies, assistants, and other help, shall also be paid out of the revenues of Porto Rico on the warrant of the auditor, countersigned by the governor.

The annual salaries of the officials appointed by the President, and so to be paid, shall be as follows:

The governor, eight thousand dollars; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of Porto Rico, with the furniture and effects therein, free of rental.

The secretary, four thousand dollars.

The attorney-general, four thousand dollars.

The treasurer, five thousand dollars.

The auditor, four thousand dollars.

The commissioner of the interior, four thousand dollars.

The commissioner of education, three thousand dollars.

The chief justice of the supreme court, five thousand dollars.

The associate justices of the supreme court (each), four thousand five hundred dollars.

The marshal of the supreme court, three thousand dollars.

The United States district judge, five thousand dollars.

The United States district attorney, four thousand dollars.

The United States district marshal, three thousand five hundred dollars.

SEC. 37. That the provisions of the foregoing section shall not apply to the municipal officials. Their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the municipalities, shall be paid out of the municipal revenues in such manner as the legislative assembly shall provide.

SEC. 38. That no export duties shall be levied or collected on exports from Porto Rico; but taxes and assessments on property, and license fees for franchises, privileges, and concessions may be imposed for the pur-

poses of the insular and municipal governments, respectively, as may be provided and defined by act of the legislative assembly; and where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law to provide for expenditures authorized by law, and to protect the public credit, and to reimburse the United States for any moneys which have been or may be expended out of the emergency fund of the War Department for the relief of the industrial conditions of Porto Rico caused by the hurricane of August eighth, eighteen hundred and ninety-nine: *Provideded, however,* That no public indebtedness of Porto Rico or of any municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property.

SEC. 39. That the qualified voters of Porto Rico shall, on the first Tuesday after the first Monday of November, anno Domini nineteen hundred, and every two years thereafter, choose a resident commissioner to the United States, who shall be entitled to official recognition as such by all Departments, upon presentation to the Department of State of a certificate of election of the governor of Porto Rico, and who shall be entitled to a salary, payable monthly by the United States, at the rate of five thousand dollors per annum: *Provided,* That no person shall be eligible to such election who is not a bona fide citizen of Porto Rico, who is not thirty years of age, and who does not read and write the English language.

SEC. 40. That a commission, to consist of three members, at least one of whom shall be a native citizen of Porto Rico, shall be appointed by the President, by and with the advice and consent of the Senate, to compile and revise the laws of Porto Rico; also the various codes of procedure and systems of municipal government now in force, and to frame and report such legislation as may be

necessary to make a simple, harmonious, and economical government, establish justice and secure its prompt and efficient administration, inaugurate a general system of education and public instruction, provide buildings and funds therefor, equalize and simplify taxation and all the methods of raising revenue, and make all other provisions that may be necessary to secure and extend the benefits of a republican form of government to all the inhabitants of Porto Rico; and all the expenses of such commissioners, including all necessary clerks and other assistants that they may employ, and a salary to each member of the commission at the rate of five thousand dollars per annum, shall be allowed and paid out of the treasury of Porto Rico as a part of the expenses of the government of Porto Rico. And said commission shall make full and final report, in both the English and Spanish languages, of all its revisions, compilations, and recommendations, with explanatory notes as to the changes and the reasons therefor, to the Congress on or before one year after the passage of this Act.

SEC. 41. That this Act shall take effect and be in force from and after the first day of May, nineteen hundred.

Approved, April 12, 1900.

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Supreme Court of the United States.

No. —, Original.—October Term, 1900.

In the matter of José Juan Vidal, José Gual y Silven, Julian Villodas Gulliod, Julio S. Bruno Juan Francisco Rivera, Manuel L. Aguiar, Agustin Calimano, Fabriciano Cuevas, Modesto Bird y Leon, Manuel Lopez Collazo, Tomas Vasquez Rivera, Luis E. Castagnet Cintron, Sergio de la Mata Dalmau, Domingo Pales Anes, and Joaquin Fernandez Colon, petitioners.	Application for leave to file petition for writ of certiorari to the judges of the Provisional Court of the Department of Porto Rico.

[November 12, 1900.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was an application for leave to file a petition for certiorari to review the proceedings of a tribunal established by a General Order, numbered 88, of Brigadier-General Davis, of the United States Army, then commanding the Department of Porto Rico and the supreme military authority in that island, in the nature of a *quo warranto* to oust Vidal and others from the municipal offices of the town of Guayama. The application was submitted April 23, 1900, and, as usual, time was given for a brief in opposition, which was presented April 30.

Section 716 of the Revised Statutes, brought forward from section 14 of the Judiciary Act of 1789, provides: "The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by the statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

This court is not thereby empowered to review the proceedings of military tribunals by certiorari. Nor are such tribunals courts with jurisdiction in law or equity within the meaning of those terms as used in the third Article of the Constitution, and the question of the issue of the writ of certiorari in the exercise of inherent general power cannot arise in respect of them.

By act of Congress of April 12, 1900, (31 Stat. 77, c. 191,) taking effect by its terms on the first of May, the tribunal in question was, as the act states, discontinued, and a United States District Court established as its successor, authorized to take possession of its records and to take jurisdiction of all cases and proceedings pending therein.

The result is, from either point of view, that this application cannot be entertained.

Leave denied.